



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 08-041

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

1. Statutory Authority

Section DFI-CCS 20.04 (2) is not complete. It suggests that a video service provider can transfer a franchise simply by filing a notice of transfer with the department and each municipality in its video service area. In addition, s. 66.0420 (11), Stats., requires that the successor-in-interest must submit to the department a complete application for a video service franchise.

2. Form, Style and Placement in Administrative Code

a. The rule preface should discuss whether video franchise area legislation and rules exist in the States of Iowa, Michigan, and Minnesota and, if so, provide a summary.

b. In s. DFI-CCS 20.02, the introduction should not be preceded by the notation “(1).” The paragraphs should be renumbered from pars. (a) to (c) to subs. (1) to (3).

c. The rule should be written in the active voice. In most cases, this will take a form such as: “An applicant for a video service franchise shall...” [s. 1.01 (1), Manual.]

d. Section DFI-CCS 20.03 (1) (intro.) should be rewritten in the correct format for an introduction, as follows: “A video service provider may file an application for a video service franchise certificate in any of the following ways:”. In addition, s. DFI-CCS 20.03 (1) (a) should end with a period, rather than “; or”. [s. 1.03 (8), Manual.]

e. The rule should use the same terminology as s. 66.0420, Stats., to the extent possible. For example, what the statute calls a video service franchise the rule calls a video service franchise certificate; what the statute calls a video service provider the rule calls a holder of a video service franchise certificate. Also, while the statute refers to application for a franchise, the rule refers to filing a franchise. Since the department has the duty to review the application and reject it if the department determines that the applicant is not legally, technically, or financially qualified to provide video service, this is an application, not a simple filing.

f. The note regarding how to obtain forms, at the end of the rule, is not drafted as part of the rule. It should be put in a note following ss. DFI-CCS 20.03 (4), 20.04 (3), and 20.07 (5).

g. There are two provisions designated as s. DFI-CCS 20.07 (2).

h. In s. DFI-CCS 20.07 (4) (d), the notation “Stats.,” should be inserted after the reference to “s. 66.0420.”

i. In s. DFI-CCS 20.09 (1) (a) and (b), the word “the” should be inserted before the word “applicant.”

j. The effective date provision should be designated as SECTION 2 of the rule-making order.

4. Adequacy of References to Related Statutes, Rules and Forms

It appears that s. DFI-CCS 20.10 applies to revocation proceedings under s. 66.0420 (3) (i), Stats., and not to enforcement actions under s. 66.0420 (13) (c), Stats. Assuming this is correct, the reference on page 8, line 132 should cite s. 66.0420 (3) (i), Stats., and the words “or bring an action,” also on that line, should be deleted.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The definition of “low-income household” refers to “the poverty line for a family of three as defined in 42 USC 9902 (2).” That reference could be read a couple of different ways. The federal statute *defines* “poverty line” (using the word “means”) in terms of a determination made by the U.S. Office of Management and Budget (OMB), but directs the U.S. Secretary of Health and Human Services to periodically *revise* the poverty line determined by the OMB. Which version is intended? Also, 42 USC 9902 (2) does not mention the concept of the poverty line “for a family of three.” This definition should be clarified, either through a fuller description or a different reference.

b. A note following s. DFI-CCS 20.04 (1), indicating the amount of the fees specified in s. 66.0420 (3) (k) 2., would be helpful to the reader.

c. Since county boundaries are defined in Chapter 2 of the statutes, the department should refer, in s. DFI-CCS 20.07 (4) (b), to those boundaries rather than to boundaries “set or recognized by the counties...” Also, the Secretary of State maintains a repository of records describing official municipal boundaries, and so it may be appropriate to refer, in s. DFI-CCS

20.07 (4) (a), to the boundaries described in those records rather than to the boundaries “set or recognized by the municipalities....”